

DEPARTMENT OF STATE REVENUE

04-20171204R.MOD

Memorandum of Decision NUMBER: 04-20171204R
Sales Tax
For The 2017 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this decision.

HOLDING

Indiana Automobile Dealership was entitled to a partial refund of sales tax, which it initially collected from out-of-state Buyer at the time of the vehicle sale and subsequently refunded to Buyer. Pursuant to the 2014 Indiana law, the vehicle sale was an Indiana sale subject to sales tax at the sales tax rate of Buyer's state of residency.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-4-1; IC § 6-2.5-5-24; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-9-1; IC § 6-2.5-6-14.1; WV Code § 11-15-3c; *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#); Sales Tax Information Bulletin 28S (April 2012); Sales Tax Information Bulletin 84 (August 2014).

Taxpayer protests the refund denial of sales tax which was collected at the time of the vehicle sale and remitted to the state of Indiana.

STATEMENT OF FACTS

Taxpayer is an Indiana automobile dealership. In June 2017, a resident of West Virginia ("Buyer") purchased a pre-owned vehicle from Taxpayer. Taxpayer collected sales tax in the amount of \$1,322.33. The sales tax was calculated based on 5.75 percent of the sale price of that vehicle, which was \$22,997.00. Buyer took possession of the vehicle at Taxpayer's business location in Indiana and drove back to his home in West Virginia.

Buyer proceeded to title and register the vehicle in West Virginia, but was required to pay a "privilege tax" in the amount of \$1,379.82 at the West Virginia's Division of Motor Vehicles ("WV DMV") for titling the vehicle in that state. After paying the privilege tax to WV DMV, Buyer sought a refund of the sales tax he paid to Taxpayer at the time of the purchase. Taxpayer refunded Buyer the sales tax it had collected so Buyer could pay the tax in West Virginia. Taxpayer subsequently filed a claim for refund with the Indiana Department of Revenue ("Department") for a refund of the \$1,322.33, which it remitted to the Department. The Department denied Taxpayer's refund claim, stating as its reason, "Effective July 2014 motor vehicle dealers must collect the applicable tax rate on all out of state sales with the tax rate of that state."

Taxpayer protested the refund denial. An administrative phone hearing was held. This Memorandum of Decision results. Further facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

The issue is whether Taxpayer is entitled to a refund of the sales tax which it previously collected from Buyer and remitted to the Department, and subsequently refunded to Buyer. Taxpayer argued that it is entitled to the full refund because Indiana did not pass the sales tax it remitted along to West Virginia.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the

person may file a claim for a refund with the department. . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax . . . is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

In the case of a retail merchant seeking a refund of gross retail or use tax, the retail merchant may only obtain such a refund if it has refunded those taxes to the person from whom they were collected. IC § 6-2.5-6-14.1.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana]" IC § 6-2.5-13-1(d)(1). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." IC § 6-2.5-2-1.

When a purchaser claims the purchase "is exempt from the state gross retail [] tax[], [the purchaser] may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The "seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail [] tax on that purchase." *Id.* Otherwise, as an agent for the State of Indiana, the seller "holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

Additionally, a statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, "[t]he general rule is that tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). One particular exemption relevant to this present case is a retail transaction that qualifies as interstate commerce. IC § 6-2.5-5-24(b); See also [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#). The Department's Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA ("Information Bulletin 28S"), addressing issues concerning sales of motor vehicles, further explains, in relevant part, as follows:

IV. INTERSTATE COMMERCE EXEMPTION

A vehicle . . . sold in interstate commerce is not subject to the Indiana sales tax. ***To qualify as being "sold in interstate commerce," the vehicle . . . must be physically delivered, by the selling dealer to a delivery point outside Indiana.*** The delivery may be made by the dealer, or the dealer may hire a third-party carrier. ***Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of delivery and must keep a copy of such terms of delivery to substantiate the interstate sale.*** The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana. ***If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale.*** (Emphasis in original) (*Emphasis added*).

Accordingly, a licensed Indiana car dealer generally must either collect sales tax or an exemption certificate at the time of the sale of the vehicle. To qualify for the interstate commerce exemption, it is important to document the terms and the method of delivery on the sales invoice and maintain copies of delivery documents to substantiate that the vehicle was sold in interstate commerce. Otherwise, the dealer, as an agent for the state, will be

responsible for the Indiana sales tax. Similarly, when a purchaser makes the same claim, the purchaser must substantiate that the transaction qualifies as an interstate sale.

Taxpayer asserted that it is entitled to a sales tax refund from Indiana because Buyer was required to pay tax a second time on the same vehicle purchase when he titled the vehicle at the WV DMV. Taxpayer is claiming such a refund in accordance with IC § 6-2.5-6-14.1. In support of its protest, Taxpayer provided a copy of the ST-108NR (Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle for a Nonresident) executed by Buyer, a Bill of Sale, Taxpayer's sales tax report for June 2017 showing the sales tax amount collected from Buyer, proof of Buyer's residency on a West Virginia vehicle registration for a different vehicle and Buyer's driver's license, and a payment record showing the refund of sales tax to Buyer.

Upon review, however, Taxpayer's argument that Indiana should have remitted the sales tax to West Virginia is mistaken. Taxpayer's supporting documentation demonstrated that the transaction took place at the Taxpayer's business location in Indiana. That is, the transaction began and concluded in Indiana when Buyer took the possession of the vehicle he purchased in Indiana. In other words, Taxpayer delivered the vehicle at its Indiana business location and Buyer accepted the vehicle in Indiana. Thus, the sale of the vehicle in question was an Indiana sale subject to Indiana sales tax. IC § 6-2.5-13-1(d)(1). The vehicle was not sold in interstate commerce because the dealer did not deliver the vehicle outside Indiana. Indiana is not precluded from imposing sales tax on an Indiana sale regardless of whether West Virginia allows a credit for sales tax paid on out-of-state retail transactions. Since Buyer was not entitled to any exemption pursuant to Indiana law, the Taxpayer, as an agent for the state, was required to collect the sales tax at the time of the vehicle sale because Buyer's purchase was not exempt from Indiana sales tax. Taxpayer became personally liable for remitting the sales tax to the state of Indiana under IC § 6-2.5-9-3.

Nonetheless, in 2014, the Indiana General Assembly enacted legislation, 2014 Ind. Acts 1983, P.L. 166-2014, § 9 (codified at IC § 6-2.5-2-3), offering deferential treatment on certain qualified Indiana sales of motor vehicles. Specifically, IC § 6-2.5-2-3 allows purchasers who purchase vehicles in Indiana but intend to title and register the vehicles to be used in states other than Indiana (within 30 days after the sale) to pay the tax rate of the state for which the vehicles are ultimately titled, registered, and used. The Department's Sales Tax Information Bulletin 84 (August 2014), 20140827 Ind. Reg. 045140329NRA ("Information Bulletin 84") further explains the computation of the sales tax concerning the qualified Indiana sales. Pursuant to IC § 6-2.5-2-3 and Information Bulletin 84, the applicable sales tax rate for West Virginia is 5 percent, which is a special tax rate applicable to vehicles under WV Code § 11-15-3c(b). This rate differs from West Virginia's general sales tax rate, which is 6 percent. Thus, Taxpayer over-collected sales tax on the vehicle sale by 0.75 percent.

Finally, Taxpayer asserts that Buyer should not have to pay tax twice on the same vehicle purchase. However, Taxpayer's complaint was with respect to West Virginia's failure to allow Buyer a credit or exemption for sales tax paid on an out-of-state purchase under WV Code § 11-15-3c(f). Thus, Buyer's and Taxpayer's recourse and remedies must rest with West Virginia, and Indiana has no authority to address that matter. It is up to the purchaser's state of residence as to whether that state will give the purchaser a credit or exemption for sales tax paid to Indiana when he or she registers the vehicle out of state.

In short, Taxpayer's vehicle sale was an Indiana retail transaction subject to Indiana sales tax. Taxpayer demonstrated that Buyer's purchase qualified for the deferential treatment under IC § 6-2.5-2-3. Taxpayer has further demonstrated that it collected and remitted sales tax at the rate of 5.75 percent, not the applicable rate of 5 percent. Because Taxpayer has shown that it refunded the sales tax back to Buyer, Taxpayer is entitled to a refund of 0.75 percent of the vehicle sale price. Taxpayer is not entitled to a full refund of sales tax remitted to the state of Indiana for the vehicle sold to the non-resident purchaser.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer is entitled to a refund of 0.75 percent of the vehicle selling price.

Posted: 03/28/2018 by Legislative Services Agency
An [html](#) version of this document.